



SAMPLE GENERAL NOTICE LETTER

GENERAL NOTICE LETTER

URGENT LEGAL MATTER

PROMPT REPLY NECESSARY

CERTIFIED MAIL: RETURN RECEIPT REQUESTED *[If demand for costs is included, send letter by Federal Express Next Day Delivery.]*

[Date]

[PRP Name]

[Address]

[City, State, Zip Code]

Re: General Notice Letter for the [Site Name] in [Site Location]

Dear [PRP Name] :

[If a Section 104(e) letter has been issued, insert the following paragraph:] The U.S. Environmental Protection Agency ("EPA") has received and reviewed your [insert date] response to its [insert date] Information Request, which was sent to [you or company name] in connection with the [site name] Site ("the Site") located in [city, state]. Based on your response and other available information, EPA has determined that you may be responsible under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), commonly known as the federal "Superfund" law, for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

[If a Section 104(e) letter has not been issued, insert the following paragraph:] Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), commonly known as the federal "Superfund" law, the U.S. Environmental Protection Agency ("EPA") is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment – that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. EPA has documented that such a release has occurred at the [site name] Site ("the Site") located in [city, state]. EPA has spent, or is considering spending, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to EPA, EPA has determined that [you or company name] may be responsible under CERCLA for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

Explanation of Potential Liability

Under CERCLA, specifically Sections 106(a) and 107(a), potentially responsible parties (“PRPs”) may be required to perform cleanup actions to protect the public health, welfare, or the environment. PRPs may also be responsible for costs incurred by EPA in cleaning up the Site, unless the PRP can show divisibility or any of the other statutory defenses. PRPs include current and former owners and operators of a Site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.

Based on the information collected, EPA believes that [you or company name] may be liable under Section 107(a) of CERCLA with respect to the [insert site name] Site, as [a/an] *[select from the following:]* (1) arranger, who by contract or agreement, arranged for the disposal, treatment or transportation of hazardous substances at the Site; (2) current or previous owner and/or operator of the Site; (3) transporter, who by contract or agreement, accepted hazardous substances for transportation and disposal at, and selected the Site. *[Additional information as to the nature of the PRP’s liability may be added. For example, if TCE is the contaminant of concern at a Site: “Specifically, EPA has reason to believe that [you or your company] [contributed TCE to the Site as an [owner/operator, transporter]] OR [arranged for the disposal, treatment, or transportation of TCE to the Site].”]*

To date, EPA [and the State/Commonwealth of _____] [has/have] taken [several] response action[s] at the Site under the authority of the Superfund Program. Below is a brief description of the actions taken at the Site. *[Insert brief description, including dates of Site activities such as:]*

- A Preliminary Assessment (“PA”) and Site Investigation (“SI”) in order to gain a basic understanding of any risks posed to human health and/or the environment by releases or threatened releases from the Site.
- A Removal Action, conducted to reduce any immediate threat to the environment or human health posed by the Site.
- A Remedial Investigation (RI) to identify the Site characteristics and to define the nature and extent of soil, air, surface water, and groundwater contamination at the Site and the risks posed by the Site.
- A Feasibility Study (“FS”) to evaluate different cleanup options for the Site.
- Remedial Design and Remedial Action (“RD/RA”) to design and implement the EPA-approved cleanup action for the Site.
- Activities to monitor, operate and maintain the cleanup action after the cleanup is completed.

[If the Region has sufficient information to conclude that the PRP may be eligible for a *de minimis* settlement, use the “Model Notice of Eligibility to Receive a De Minimis Party Settlement” letter, issued as Appendix A to the “Interim Guidance on the Ability to Pay and De Minimis Revisions to CERCLA § 122(g) by the Small Business Liability Relief and Brownfields Revitalization Act,” instead of this letter. [Appendix A has been modified and is available from the Superfund enforcement policy and guidance document database at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund>] If the Region has insufficient information on which to reach this conclusion, but believes it is appropriate to notify the PRP of the existence of *de minimis* settlements, include the following section.]

De Minimis Settlements

Under Section 122(g) of CERCLA, whenever practicable and in the public interest, EPA may offer special settlements [for a waste contributor PRP, insert, “to parties whose waste contribution to a site is minimal in volume and toxicity, that is, *de minimis* parties.”] [for a landowner, insert “to owners of real property if: (1) such owner did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substances at the Superfund facility; and (2) the owner did not have actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.”]

Individuals or businesses resolving their Superfund liability as *de minimis* parties are not typically required to perform site cleanup. Instead, EPA requires *de minimis* settlers to pay their fair share of cleanup costs incurred, plus a “premium” that accounts for, among other things, uncertainties associated with the costs of work to be performed in the future. In return, *de minimis* settlers receive: (1) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement; and (2) protection from contribution claims, which provides a settling party with protection from being sued in a contribution action by other responsible parties for the specific matters addressed in the settlement. (The matters addressed in a *de minimis* settlement are typically all cleanup actions and all cleanup costs at the particular site.) Participation in a *de minimis* settlement means that you are settling directly with EPA as soon as it is possible to do so.

The protection from contribution suits for *de minimis* settlers is based on Sections 113(f)(2) and 122(g)(5) of the CERCLA law, which provide that a person “who has resolved its liability to the United States” in an administrative or judicially approved settlement “shall not be liable for claims for contribution regarding matters addressed in the settlement.” This protection against contribution claims, however, may not extend to claims by third parties that have incurred their own response costs and seek to recover them under Section 107(a)(4)(B). See United States v. Atlantic Research Corporation, 127 S.Ct. 2331, 168 L.Ed. 2d 28 (June 11, 2007) (in certain situations, a liable party who has incurred cleanup costs at a site can sue other liable parties under CERCLA Section 107(a)(4)(B)).

If [you or company name] believe[s] that [you/it] may be eligible for a *de minimis* settlement at this Site, please contact [name of attorney/RPM/enforcement specialist] at

[address/phone number] for additional information on “De Minimis Settlements.” [Optional: Additional information will be sent to you, and you may be asked to respond in writing to questions about your involvement with the Site to assist EPA in making a determination as to whether you may be eligible for such a settlement.]

[If the Region has sufficient information to conclude that the PRP may be eligible for an inability to pay settlement, use the “Model Notice Approving Reduction in Settlement Amount Based on Inability to Pay” letter, issued as Appendix B to the “Interim Guidance on the Ability to Pay and De Minimis Revisions to CERCLA § 122(g) by the Small Business Liability Relief and Brownfields Revitalization Act,” instead of this letter. [Appendix B has been modified and is available from the Superfund enforcement policy and guidance document database at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund>.] If the Region has insufficient information on which to reach this conclusion, but believes it is appropriate to notify the PRP of the existence of inability to pay settlements, include the following section.]

Financial Concerns/Ability to Pay Settlements

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If you believe, and can document, that you fall within that category, please contact [name of attorney/RPM/enforcement specialist] at [address/phone number] for information on "Ability to Pay Settlements." In response, you will receive a package of information about the potential for such settlements and a form to fill out with information about your finances, and you will be asked to submit financial records including business [and personal] federal income tax returns. *[If appropriate, insert, “If EPA concludes that [you or company name] have a legitimate inability to pay the full amount of EPA’s costs, EPA may offer a schedule for payment over time or a reduction in the total amount demanded from you.”]*

Also, please note that, because EPA has a potential claim against you, you must include EPA as a creditor if you file for bankruptcy.

Information to Assist You

EPA would like to encourage communication between you, other PRPs, and EPA at the Site. *[Where appropriate, insert: “EPA recommends that all PRPs meet to select a "steering committee" that will be responsible for representing the group's interests. Establishing a manageable group is critical to successful negotiations with EPA. If this is not possible, EPA encourages each PRP to select one person from its company or organization to represent its interests to EPA.”]*

To assist you in your efforts to communicate, please find the following attached information:

1. A list of names and addresses of PRPs to whom this letter is being sent.
2. To the extent information is available, a list of the volume and type of substances contributed by each PRP to the Site to date. This is an initial list and subject to

change based upon new information.

3. A fact sheet that describes the Site.

EPA [has/will] establish[ed] an Administrative Record that contains documents that serve as the basis for EPA's selection of a cleanup action for the Site. The Administrative Record [is/will be] located at [address] and [is/will be] available to you and the public for inspection and comment. The Administrative Record [is also/will also be] available for inspection and comment at the Superfund Records Center, EPA Region [number and address].

Resources and Information for Small Businesses

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

In addition, if you are a “service station dealer” who accepts used oil for recycling, you may qualify for an exemption from liability under Section 114(c) of CERCLA. EPA guidance regarding this exemption can be found on the Internet at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>. If you believe you may qualify for the exemption, please contact [name and phone number of attorney/RPM/enforcement specialist] to request an application/information request specifically designed for service station dealers.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at <http://www.epa.gov>. In addition, the EPA Small Business Ombudsman may be contacted at <http://www.epa.gov/sbo>. Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act (“SBREFA”), which is enclosed with this letter.

Please give these matters your immediate attention and consider consulting with an attorney. If you have any questions regarding this letter, please contact [name and phone number of regional contact]. Thank you for your prompt attention to this matter.

Sincerely,

[Name/Title/Address of Individual Delegated
Signature Authority]

Enclosures

cc: